

**REMARKS**

In the Official Action mailed 7 March 2007, the Examiner reviewed claims 146, 148, 174-179, and 189-196. The Examiner has rejected claims 146, 148, 174-175, 178-179, 189, 191-193 and 195-196 under 35 U.S.C. §102(e); has rejected claims 176, 177, 190 and 194 under 35 U.S.C. §103(a).

Applicant amends claim 146. Claims 146, 148, 174-179, and 189-196 remain pending.

The rejections in the Official Action are respectfully traversed below, and reconsideration is requested.

Rejection of Claims 146, 148, 174-175, 178-179, 189, 191-193 and 195-196 under 35 U.S.C. §102(e)

The Examiner has rejected claims 146, 148, 174-175, 178-179, 189, 191-193 and 195-196 under 35 U.S.C. §102(e) as being anticipated by Berger (US 6684063). Reconsideration is respectfully requested.

Of this claim set, claims 146 and 174 are independent claims. Applicant amends independent claim 146 to add that the “interactive process” to provide the hearing profile uses the audio transducer mounted on the headset. A similar requirement is already stated in independent claim 174. Berger relies upon “prescriptions” rather than interactively produced hearing profiles that, as required by the present claims, are provided using the audio transducer on the headset. The manner in which the prescriptions used in Berger are provided, is not described. However, the ordinary meaning of the term “prescription” suggests that it is provided by audiologists or other medical professionals. For this reason, Berger actually teaches away from the present invention. In order to provide a truly usable headset that can be adapted to a user’s hearing profile and used with a variety of audio sources, the present inventors have created a system in which a hearing profile is easily provided and is specifically adapted to the headset. The reliance by Berger on “prescriptions” suggests that he was not even aware of the issues involved.

Applicant points out, in addition, that the case for anticipation in the Official Action improperly mixes features from two different devices that are described in the Berger patent. In connection with the discussion of claim 1 for example, two attributes of the handheld device of

Berger described at column 2, lines 54-65 and at column 3, lines 20-38, are attributed to the headset described at column 6, lines 23-28 of Berger. The first attribute of the handset, including providing for a data processor that processes sound according to a hearing aid prescription, is included specifically in the headset embodiment. However, there is no suggestion in Berger that the second attribute of the handset relied upon in the Office Action (that is, programmability allowing a user to select among prescriptions preset in the handset) is included in the headset embodiment. In fact, Berger suggests that in order for these features to be made available for a headset, the headset should be “plugged into the device” where the device is apparently the handset or other audio source that includes the processing resources of the handset (see, Berger, column 6, lines 38-46). In a reference relied upon for a finding of anticipation, as stated in the Manual of Patent Examining Procedure (MPEP), Eighth Edition, August 2001, rev. August 2006, §2131 Anticipation - Application of 35 U.S.C. 102(a), (b), and (c), “The elements must be arranged as required by the claim ... *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).” Berger does not arrange the elements, relied upon in the Official Action, in the manner required by the claims in the present application. Therefore, the case set out in the Official Action for anticipation is flawed.

As suggested above, even if the headset in Berger included all the features of the handset, it would not anticipate the present claims. In particular, Berger relies upon hearing aid prescriptions to be provided for use in the headset. It does not, as required in claim 1 as amended, teach “a computer program stored on the data storage medium executable by the data processor to communicate with an external data processing device providing a user interface supporting an interactive process using the audio transducer mounted on the headset to provide the hearing profile.” Likewise, Berger does not describe a process, as required in claim 174, including “executing an interactive process using the user interface and the audio transducer on the headset to develop a hearing profile.”

The citation relied upon in the Office Action as teaching these claimed elements is Berger at column 3, lines 20-40, which is reproduced here:

In alternatives, multiple prescriptions can be programmed into processor **210**. The multiple prescriptions can allow a single user with hearing loss in both ears to select between prescriptions and thus use either ear. Processor **210** can also be programmed with different prescriptions for different users. There are many ways various users can access different prescriptions. For example, each user can be given a code whose entry will cause implementation of his own prescription. Implementation can be by PBX, in which centralized processors store prescription codes, for example allowing employees to enter codes that tailor signals to their prescription at any company telephone. In other embodiments, switches on the handset can allow users to select their prescription from among programmed prescriptions.

Additionally, the processor is preferably programmable, so that the programming can be changed if a user's prescription changes, or to accommodate users not previously known to the system, e.g. visitors or users of public telephones. For example, the processor is reprogrammed if one user leaves the workplace and another user starts employment.

This passage describes the distribution of prescriptions. It does not describe an interactive process for providing hearing profiles using the audio transducer on the headset. Indeed, Berger does not seem to be aware of a key problem solved by the present invention, that must be addressed to provide a truly versatile headset usable with a variety of audio sources.

Berger teaches, without real enabling discussion, that its technique of applying hearing aid prescriptions to cell phones can be extended to a variety of audio sources (Berger, column 6, lines 28-34). However, Berger does not recognize the problems associated with doing so. First, prescriptions are difficult and costly to obtain, requiring expert audiologists to produce. Also, the audiologist must know the audio source, the device which will process the audio, and the transducer used to play the audio, in order to make an accurate prescription. Berger does not address these issues at all. For a truly versatile headset adapted to the hearing profile of a user, the hearing profile must be provided with an interactive process using the audio transducer on the headset.

The independent claims 146 and 174 herein require an interactive process that uses the audio transducer on the headset, unlike any prior art of record.

Claim 148 depends from claim 146 and is allowable for at least the same reasons, and because of the unique combination recited. For example, claim 148 requires further that the audio transducer used by the interactive process comprises stereo speakers. No similar technique is described in Berger.

Likewise, claims 189, 191 and 192 depend from claim 146, and are allowable for at least the same reasons, and because of the unique combinations recited.

For example, as to claim 191, Berger does not suggest that the hearing profile can be modified using an interactive process that uses the audio transducer on the headset. The ability to modify a hearing profile as recited is a unique feature of the headset claimed herein, allowing a user to adapt the hearing profile over time, based on real in the field experience. No prescription-based system as suggested by Berger would be capable of providing such service. As taught by the present invention, a user is able to both establish and optimize the profile for use in the headset.

Claims 175, 178, 179, 193, 195 and 196 depend from claim 174, and are allowable for at least the same reasons, and because of the unique combinations recited. Claim 195 requires “supporting an interactive process to modify the hearing profile,” which is not taught by any reference of record, as mentioned above in connection with claim 191.

Accordingly, reconsideration of the rejection of claims 146, 148, 174-175, 178-179, 189, 191-193 and 195-196, as amended, is respectfully requested.

#### Rejection of Claims 176, 177, 190 and 194 under 35 U.S.C. §103(a)

The Examiner has rejected claims 176, 177, 190 and 194 under 35 U.S.C. §103(a) as being unpatentable over Berger in view of Campbell (US 6212496).

Claims 176, 177 and 194 depend from claim 174, and are allowable for at least the same reasons, and because of the unique combinations recited. Claim 190 depends from claim 146, and is allowable for at least the same reasons, and because of the unique combination recited.

Claims 190 and 194 require the use of a hearing test in the interactive process that uses the audio transducer on the headset. Neither Berger nor Campbell teaches an interactive process using the audio transducer on the headset.

Claims 176 and 177 require storing the profile provided using the audio transducer on the headset in a remote site, and producing the customized audio data product in a remote site,

respectively. As to claim 176, the Office Action mistakenly reads it on receiving a customized audio product from a remote site. In fact, no reference describes storing a hearing profile produced using the audio transducer on the headset at a remote site as required by the claim.

As to claim 177, no reference describes applying a hearing profile produced using an interactive process that uses the audio transducer on a headset, for remotely producing a customized audio data product.

Accordingly, reconsideration of the rejection of claims 176, 177, 190 and 194 is respectfully requested.

### **CONCLUSION**

It is respectfully submitted that this application is now in condition for allowance, and such action is requested. If the Examiner believes a telephone conference would aid the prosecution of this case in any way, please call the undersigned at (650) 712-0340.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (RXSD 1001-3).

Respectfully submitted,

/mark haynes/

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